



March 20, 2001

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
1500 Marilla
Dallas, Texas 75201

OR2001-1094

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145124.

The City of Dallas (the "city") received a request for a copy of the application of Las Colinas Apartments for tax-exempt bond financing through the City of Dallas Housing Finance Corporation. You claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common law privacy. You also believe that some of the information may involve the privacy or proprietary interest of third parties. In accordance with section 552.305, you notified three third parties whose proprietary interests may be implicated by the public release of portions of the requested information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). We have considered your claimed exception and the arguments asserted by the interested third parties. We have also reviewed the submitted documents.

We first address the arguments of the interested third parties, who are (1) Mr. Alex Stolarski, (2) the Rishon Companies, (3) the Hamishi Corporation, (4) Mr. William P. Wenson, and (5) Las Colinas Apartments, Ltd. Mr. Stolarski, writing for himself, the Rishon Companies, and the Hamishi Corporation, claims that the requested information is excepted from

disclosure under section 552.110 of the Government Code. Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision and (2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained. The governmental body, or interested third party, raising section 552.110(b) must provide a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury to the third party would likely result from disclosure. Gov't Code § 552.110(b); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). Mr. Stolarski claims that "release of our application of Las Colinas Apartments . . . for Tax-Exempt Bond Financing . . . would harm the companies as well as myself since it could be misused by our competition." Based on these comments and our review of the submitted information, we do not believe that Mr. Stolarski has demonstrated by specific factual evidence that the release of the submitted information would cause substantial competitive harm to himself, the Rishon Companies, or the Hamishi Corporation. Therefore, the city may not withhold any of this information under section 552.110(b) of the Government Code.

Next, the city informs us that Mr. Wenson orally informed the city that Los Colinas Apartments, Ltd. believes that the requested information is private and should be exempt from mandatory disclosure. However, neither Mr. Wenson nor Los Colinas Apartments, Ltd. submitted written comments to this office. Therefore, we have no basis on which to determine whether the information pertaining to Los Colinas Apartments, Ltd. is protected by section 552.110 of the Government Code. *See generally* Open Records Decision Nos. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, the city must release the information pertaining to Los Colinas Apartments, Ltd.

We next address the city's claimed exception to disclosure. The city claims that the information in Exhibit B is excepted from disclosure under section 552.101 in conjunction with common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found.*, 540 S.W.2d at 685. The city explains that the information in Exhibit B consists of financial documents submitted by Mr. Wenson, Mr. Stolarski, and the Hamishi Corporation to the City of Dallas Housing Finance Corporation as part of their application for project financing under the Texas Housing Finance Corporation Act, chapter 394 of the Local Government Code. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common law privacy.

See Open Records Decision Nos. 523 (1989), 373 (1983); *but see* Open Records Decision Nos. 620 (1993) (recognizing that corporations do not have a right of privacy), 192 (1978) (stating that right of privacy protects feelings and sensibilities of human beings, rather than to safeguard property, business, or other pecuniary interests). Based on our review of the information in Exhibit B, we have marked the information that you must withhold under section 552.101 in conjunction with common law privacy. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

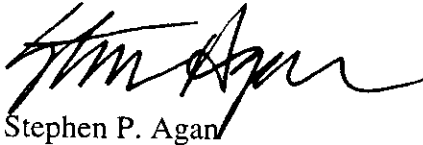
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely, *



Stephen P. Agan
Assistant Attorney General
Open Records Division

SPA/seg

Ref: ID# 145124

Encl. Submitted documents

cc: Mr. David Michaels
The Dallas Morning News
P.O. Box 655237
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(w/o enclosures)

Mr. Alex Stolarski
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Irving, Texas 75061
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